

Supreme Court, U. S.

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IN THE

Supreme Court of the United States

Term, 1975

No. 75-1676

LOUIS C. BOSCIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN L. DOHERTY,
DECELLO, BUA & MANIFESTO,
200 Lawyers Building,
Pittsburgh, Pennsylvania 15219,

Attorneys for Petitioner.

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15227
412-661-7469

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IN THE

Supreme Court of the United States

..... Term, 1976

No.

LOUIS C. BOSCIA,

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v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

Louis C. Boscia, your Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on April 6, 1976, and the order denying the Petition for Rehearing dated April 23, 1976.

Opinions Below

The Opinion of the District Court denying the Motion To Dismiss the Indictment is not reported and is reprinted in Appendix A. The Opinion of the Court of Appeals is not yet reported and is reprinted in Appendix B, *infra*.

Jurisdiction

The Judgment Order of the United States Court of Appeals for the Third Circuit (Appendix A) was entered on April 6, 1976. A timely Petition for Rehearing was denied on April 23, 1976 (Appendix C). Pursuant to Rule 22 of the Rules of this Honorable Court, the Within Petition for Writ of Certiorari is being filed within thirty (30) days after the entry of the Court of Appeals' final order.

Jurisdiction of this Honorable Court is invoked under 28 United States Code §1254(1).

Question Presented

Can the Government split a single conspiracy into smaller conspiracies for the purpose of prosecutorial advantage and thus place a City into double jeopardy.

Statutes Involved

The statutory provisions involved are set forth in Appendix D hereto, *infra*.

Statement of the Case

In January, 1975, the Appellant was indicted at No. 75-3, at the present indictment, on a charge of conspiracy to use the mails for the purpose of executing a scheme to defraud between March 1, 1973 to February 5, 1974, namely, the Ohio Casualty Insurance Company, and the St. Paul Mercury Insurance Company, and with substantive counts of mailing in furtherance of such scheme to defraud.

On the same day, the Appellant was indicted at No. 75-4 on a charge of conspiracy to use the mails for the purpose of executing a scheme to defraud between July 1, 1972 to May 8, 1973, namely, the Ohio Casualty Insurance Company.

The Government elected to treat these as different conspiracies and proceeded to trial with indictment No. 75-4. Appellant Boscia was convicted and sentenced to 8 years. This indictment involved a conspiracy beginning at or about July 1, 1972 and continuing until May 8, 1973, whereby Appellant Boscia conspired to defraud by use of the mails.

The scheme to defraud was the same in both indictments whereby Appellant Boscia and Attorney Lurie would negotiate and present claims through the use of the mails which claims were fraudulent in that the accident was staged or the personal injury bills inflated.

Obvious to such a scheme, some of the participants had to be different but the scheme was the same. The scheme was simply a staged auto accident, phony medical bills and presentation of such to the insurance companies involved.

Reasons for Granting this Writ

Petitioner contends that the Government violated *Braverman v. United States*, 317 U.S. 49, in that the scheme to defraud by use of the mails was the same in July, 1972 as it was until February, 1974. The objects were insurance companies and only some of the characters changed. The Government by its many indictments is attempting to subject the Appellant Boscia to multiple prosecutions.

Appellant Boscia argues that the principles of *Braverman, supra*, are applicable. It is suggested that, first, the indictments reflect a mutuality of overlapping conspirators, known and unknown. Second, the overlapping of insurance companies, Ohio Casualty, and the overlapping of the necessary hub of the wheel, Boscia and Lurie. Third, the objective was the same, financial gain, although some insurance companies were added to expand the same. Fourth, the dates are overlapping between indictment No. 75-4 and the instant indictment, No. 75-3. Fifth, the *modus operandi* is so closely related as to obviate a giant conspiracy with smaller fragments. *U. S. v. Tanner*, 471 F.2d 128 (7th Cir. 1972); *U.S. v. Mallah*, 503 F.2d 971 (2d Cir. 1974); *U. S. v. Cohen*, 197 F.2d 26 (3d Cir. 1952); *U. S. v. O'Dell*, 462 F.2d 224 (6th Cir. 1972).

The Court of Appeals rejected the above on the state of the record before them but an investigation of the two indictments supports the Appellant's position. At the least, this matter should be remanded to the District Court for an evidentiary hearing, if the record is incomplete.

The question is important to this Court because of the need to preserve the prohibition against double jeopardy. It is also urged that whenever we think of judicial economy, it is quite obvious that multi-prosecutions in violation of the double jeopardy bar is another means of wasting judicial time.

Conclusion

It is respectfully submitted that *certiorari* should be granted so that this Court can decide with finality the question of whether such splitting of a single conspiracy

into smaller conspiracies for the sake of prosecutorial advantage is a violation of the double jeopardy clause of the United States Constitution.

Respectfully submitted,

JOHN L. DOHERTY,
DE CELLO, BUA & MANIFESTO,
Attorneys for Petitioner.

*Appendix A—Opinion and Order.***APPENDIX A**

In the
UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

UNITED STATES OF AMERICA,
vs.
LOUIS C. BOSCIA.

Criminal Action No. 75-3

Opinion and Order

SNYDER, J.

The Defendant, Louis C. Boscia, has moved the Court to dismiss this Indictment claiming the protection guaranteed to him by the Fifth Amendment against being placed in double jeopardy has been violated by his prosecution here.¹

In January of 1975, the Defendant was indicted in this case on a charge of conspiracy to use the mails to defraud the Ohio Casualty Insurance Company and the St. Paul

¹ The Fifth Amendment to the United States Constitution provides, in relevant part:

"...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;..."

Appendix A—Opinion and Order.

Mercury Insurance Company, and with substantive counts of mailing in furtherance of the scheme to defraud. On the same day, the Grand Jury in an Indictment at No. 75-4 charged that Louis Boscia and others known and unknown, conspired to use the mails to defraud the Ohio Casualty Insurance Company, and with substantive charges of mailing in furtherance of the scheme to defraud. (Herein called the "3" and "4" Indictments.) The 3 Indictment charged a conspiracy beginning about March 1, 1973 and continuing to February 5, 1974, and the 4 Indictment charged a conspiracy beginning about July 1, 1972 and continuing until May 8, 1973. The Government elected to proceed to trial first on the 4 Indictment which arose allegedly out of a staged automobile accident and the resultant filing of false injury claims by Louis DeSantis, Renaldo DiGiosio, Candice McCambridge, Barbara Ross and Mark Houmis through conspiracy with Louis C. Boscia, the insurance agent, and Dr. Elias Yurick, the treating physician.²

The Defendant urges in substance that there was charged in both Indictments the same conspiracy, however diverse its object, and that the Government is precluded from breaking down into its component sub-agreements such a conspiracy for the purpose of multiple prosecutions, citing *Braverman v. United States*, 317 U.S. 49, 53, 63

² In the trial which began June 16, 1975, all Defendants then on trial, to-wit, Louis Boscia, Louis DeSantis, Renaldo DiGiosio and Candice McCambridge were found guilty of the conspiracy charge and three mailing counts. A Defendant, Paul Scolieri, was dismissed at the conclusion of the Government's case. Defendants Mark Houmis and Barbara Ross are presently on trial.

Appendix A—Opinion and Order.

S.Ct. 99, 87 L. Ed 23 (1942); *United States v. Mallah*, 503 F. 2d 971, 982-987 (2d Cir. 1974), cert. denied, U.S.; *United States v. Tanner*, 471 F.2d 128 (7th Cir. 1972), cert. denied, 409 U.S. 949; *United States v. Cohen*, 197 F.2d 26, 29 (3d Cir. 1952). The Defendant, in support, suggests the following:

1. The Indictments reflect a mutuality of overlapping conspirators, known and unknown.
2. The overlapping of the defrauded insurance companies through the same "hub of the wheel".
3. The objective fraud was the same throughout.
4. The overlapping of dates involved in the conspiracy.
5. The *modus operandi* is so closely related as to suggest a single conspiracy.

The 4 Indictment involved a scheme by which Mary Jane Hanula³ would obtain an insurance policy on a 1968 Mercury Monterey automobile which was registered to her parents, Louis and Grace Hanula, for the purpose of collecting of false personal injury and property damage claims made to the Ohio Casualty Insurance Company as the result of the single vehicle accident of September 17, 1972.

The evidence presented at that trial sustained a finding that in the summer of 1972, Miss Hanula met with Mark Houmis and Louis Boscia at the Carlton House in Pittsburgh, and indicated that she would like to get rid of her Monterey. Louis Boscia was introduced to her for that

Appendix A—Opinion and Order.

purpose and suggested that if insurance was taken out with the Ohio Casualty Insurance Company that a false property damage claim could be made, but that personal injury claims could also be arranged. She was instructed to purchase the policy from an Ohio Casualty Agent nearest to her home, and was told that Boscia would be in touch with her after suitable arrangements had been completed for the accident. On September 17, 1972, Miss Hanula was informed by Mark Houmis that the accident would be staged that evening, and later on in the evening the "cast" was gathered near a restaurant in the City of Pittsburgh and all proceeded to a pre-arranged location where the passengers alighted and Mark Houmis drove the vehicle into a telephone pole. Boscia, who was in another vehicle, then took the claimants to the hospital and the next day Boscia arranged for Powers of Attorney, so that Attorney Herbert Lurie could carry on successful claim settlements with an Ohio Casualty Company representative with whom he had a long standing relationship. In the process, the use of the mails brought about transmittal of the necessary information and claim forms to the Ohio Casualty Insurance Company.

The 3 Indictment involved an almost totally "new cast", composed of Casey Babuscio, Thomas Warren Henning, Roy F. Norris, Thomas Robert Gallo, David Tompkins, John Sabatini, Joseph Bisceglia, Michael DeRosa, Attorney Leonard Sweeney, and Louis Boscia, and charges that three "new" accidents were staged. The first was the accident of April 12, 1973 when the 1972 Ford Pinto owned by David Tompkins and containing Boscia and Babuscio, hit into the rear of a vehicle being driven by Norris which contained Gallo and Henning at the time.

³An unindicted co-conspirator.

Appendix A—Opinion and Order.

The second accident occurred on August 15, 1973, when a vehicle being driven by Sabatini, owned by Gallo, and containing Norris, Henning, and a J. T. Boscia,⁴ hit a bridge abutment. The third collision occurred on December 26, 1973 when a vehicle being driven by Patton, owned by J. B. Sabatini, and containing Pietriopolo, Mary Boscia, Dan Boscia, and John T. Boscia, hit into the rear of a vehicle being driven by DeAchille, and containing Sabatini, Duffy and Xenakis.⁵

DISCUSSION

We can best approach an analysis of Defendant's Motion on the basis of what was so clearly set forth by Judge Bechtle in *United States v. Harris*, 368 F. Supp. 697 (E.D.Pa. 1973), affirmed 498 F. 2d 1164 (3d Cir. 1974), cert. denied 419 U.S. 1069 (1974), where he stated the following (at p. 718):

"To support a claim of double jeopardy, it must be shown that the two offenses charged are in law and in fact the same offense. *United States v. Ewell*, 383 U.S. 116, 86 S.Ct. 773, 15 L.Ed. 2d 627 (1966); *Dryden v. United States*, 403 F.2d 1008, 1009 (5th Cir. 1968). Offenses are not in the same merely because they arise out of the same general course of criminal conduct, 'they are the same only when the evidence re-

⁴ The Government contends that J. T. Boscia is a fictitious person.

⁵ After a trial on the 3 Indictment, Henning was found guilty of conspiracy and two counts of mail fraud and Attorney Sweeney was found not guilty of conspiracy but guilty on three counts of mail fraud. Tompkins was a fugitive and Babuscio, Norris, Gallo, Sabatini, Bisceglia and DeRosa entered guilty pleas. Louis Boscia was severed because of his present Motion.

Appendix A—Opinion and Order.

quired to support a conviction upon one of (the indictments) would have been sufficient to warrant a conviction upon the other.' *United States v. Pacelli*, 470 F.2d 67, 72 (2d Cir. 1972). 'When each offense requires proof of a fact not essential to the other, the charges are not identical, and the accused can be charged, tried and convicted of both offenses even though the charges arise out of the same acts.' *Pereira v. United States*, 347 U.S. 1, 74 S.Ct. 358, 98 L.Ed.435 (1954); *Goldsmith v. Cheney*, 447 F.2d 624, 627 (10th Cir.1971)."

While the two Indictments here in question allege commission of the same type of crime, i.e. conspiracy and violation of the Mail Fraud Statute, the offenses charged are not factually the same. The conspiracy charge in the 4 Indictment resulted from the staging of the September 17, 1972 automobile accident and involved claims of passengers who had no relationship whatsoever to the accidents of April 12, 1973, some of whom were involved in the accident of August 15, 1973, and some of whom were involved in the December 26, 1973 accident.

The evidence required to prove the commission of the overt acts and to support the conviction upon the 3 Indictment, would not have been sufficient to warrant conviction upon the 4 Indictment which was tried first. In the 4 Indictment there was involved the Hanula Insurance policy, the retention of the services of Herbert M. Lurie by DeSantis, DeGiosio, Mark Housis, Barbara Ross, and Candice McCambridge, the providing of false and fictitious employment information relating to the same parties, and the causing to be delivered for the purpose of executing their scheme, the particular letters charged in the substantive counts of that Indictment.

Appendix A—Opinion and Order.

On the other hand, the overt acts in the 3 Indictment involved the hiring of Herbert Lurie by Babuscio, Gallo and Henning, retaining Attorney Leonard Sweeney by Norris, Henning and Sabatini, presenting false statements concerning injuries and medical treatment and lost earnings for Babuscio, Henning and Norris by Louis Boscia, and the supplying of false employment information for Babuscio and Gallo. The mailings involved in this conspiracy were entirely different than the mailings involved in the 4 Indictment.

Boscia points to the similarities of the Indictments to show that a second charge violates the double jeopardy clause. However, as noted by the Court in *United States v. Amato*, 367 F. Supp. 547 (S.D.N.Y. 1973), similarity is not in itself sufficient to support such a claim (at p. 550):

"While it is true that a smaller conspiracy in point of time may not be carved out of a larger conspiracy, (citation omitted) an independent conspiracy is not protected from prosecution merely because it occurs during the same period as another. The mere fact that two conspiracies have common members, involve the same type of offense and overlap in time does not prove that the defendant has been twice charged with the same offense. *United States v. Barzie*, 433 F.2d 984 (2d Cir. 1970)."

Here the two Indictments charge separate, distinct conspiracies which have a common pattern. In the first, Louis Boscia conspired with Hanula, DeSantis, DiGiosio, Ross, Houmis, Dr. Yurick and McCambridge, to stage an automobile accident, and that in furtherance thereof, Houmis drove a car into a telephone pole. The object of

Appendix A—Opinion and Order.

the conspiracy charged in the 4 Indictment was to defraud the Ohio Casualty Insurance Company and to thereby obtain monies for the Defendants DeSantis, DiGiosio, Ross, Houmis, Yurick, McCambridge and Louis Boscia. The 3 Indictment encompassed the staging of three different automobile accidents, with the object of obtaining monies for the Defendants Babuscio, Henning, Norris, Gallo, Tompkins, Sabatini, Bisceglia, DeRosa, Sweeney and Louis Boscia. The overt acts alleged in the 4 Indictment were carried out in furtherance of a different agreement than that charged in the 3 Indictment. See *United States v. Young*, 503 F.2d 1072, 1076 (3d Cir. 1974). Thus we hold that Louis Boscia is not being charged in these two Indictments with but one crime. He has not shown that the two offenses are in law and in fact the same offense. It appears to this Court that proof of conspiracy charged in the 3 Indictment, yet to be tried, will require "proof of an additional fact. . . which is not necessary to (have been) proved in the trial of the other." *Dryden v. United States*, 403 F.2d 1008, 1009 (5th Cir. 1968).⁶

The Motion shall therefore be denied, and an appropriate Order will be entered.

ORDER

AND NOW, to-wit, this 7th day of October, 1975, after due consideration of and hearing on the Motion of the Defendant Louis C. Boscia to Dismiss the Indictment at

⁶ See also, *United States v. Prince*, 515 F.2d 564 (5th Cir. 1975), at p. 567.

Appendix A—Opinion and Order.

Criminal Action No. 75-3, and for the reasons as set forth in the foregoing Opinion, IT IS ORDERED that the Motion to Dismiss be and the same is hereby denied.

s/ DANIEL J. SNYDER, JR.,
United States District Judge.

CC:

John Doherty, Esquire
 200 Lawyers Building
 Pittsburgh, Pa. 15219

David Curry, Esquire
 Asst. United States Attorney
 Pittsburgh, Pa. 15219

Appendix B—Order of Court of Appeals.

APPENDIX B
Order of Court of Appeals
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 75-2298

UNITED STATES OF AMERICA,

v.

LOUIS C. BOSCIA, CASEY BABUSCIO, THOMAS WARREN HENNING a/k/a Thomas Warren, ROY F. NORRIS JR., THOMAS ROBERT GALLO a/k/a Thomas Roberts, DAVID TOMPKINS, JOHN V. SABATINI, JOSEPH L. BISCEGLIA, M.D., MICHAEL F. DeROSE DDS, LEONARD E. SWEENEY, Esq.

LOUIS C. BOSCIA,

Appellant.

(D.C. Criminal No. 75-3)

**APPEAL FROM THE UNITED STATES DISTRICT
 COURT FOR THE WESTERN DISTRICT
 OF PENNSYLVANIA**

Submitted Under Third Circuit Rule 12(6)
 April 5, 1976
 Before BIGGS, GIBBONS and HUNTER,
 Circuit Judges.

Appendix B—Order of Court of Appeals.

John L. Doherty, Esq., DeCello, Bua & Manifesto, P.C.,
200 Lawyers Building, Pittsburgh, Pennsylvania, Attorney
for Appellant.

Blair A. Griffith, United States Attorney; David M.
Curry, Asst. United States Attorney; Judith K. Giltenboth,
Asst. U.S. Attorney; 633 U.S. Post Office & Courthouse,
Pittsburgh, Pennsylvania 15219, Attorneys for Appellee.

JUDGMENT ORDER

This is an appeal from the denial of a pre-trial motion to dismiss an indictment for conspiracy to use the mail to defraud, and of substantive mail fraud counts, on the ground of double jeopardy in that the government chose to split a single conspiracy into separate conspiracies.

On the record before us at this stage of the proceedings we cannot say that the district court erred in denying the motion. See *United States v. Young*, 503 F.2d 1072 (3d Cir. 1974).

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed. No costs.

By the Court,
JOHN J. GIBBONS,
Circuit Judge.

Attest:
THOMAS F. QUINN,
Clerk.

Dated: Apr 6 1976

Appendix C—Denial of Petition for Rehearing.

Certified as a true copy and issued in lieu of a formal mandate on May 4, 1976.

Test:

THOMAS F. QUINN,
Clerk, United States Court of Appeals for the Third Circuit.

APPENDIX C**Denial of Petition for Rehearing****UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 75-2298

UNITED STATES OF AMERICA

v.

LOUIS C. BOSCIA, CASEY BABUSCIO, THOMAS WARREN HENNING a/k/a Thomas Warren, ROY F. NORRIS, JR., THOMAS ROBERT GALLO a/k/a Thomas Roberts, DAVID TOMPKINS, JOHN V. SABATINI, JOSEPH L. BISCEGLIA, M.D., MICHAEL F. DeROSE DDS, LEONARD E. SWEENEY, Esq.

LOUIS C. BOSCIA,

Appellant.

(D.C. Criminal No. 75-3)

Appendix D—Statutes Involved.

Present BIGGS, GIBBONS and HUNTER,
Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing before the original panel,

It is ORDERED that the petition for rehearing before the original panel is denied.

By the Court,
JOHN J. GIBBONS,
Circuit Judge.

Dated: April 23, 1976

APPENDIX D**Statutes Involved**

18 U.S.C. § 371 Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

*Appendix D—Statutes Involved.***18 U.S.C. § 1341 Frauds and swindles**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

Appendix E—Indictments Involved.

APPENDIX E
Indictments Involved

IN THE UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

UNITED STATES OF AMERICA,

vs.

LOUIS C. BOSCIA, LOUIS A. DeSANTIS, RENALDO DiGIOSIO, MARK HOUMIS, a/k/a Mark Houmas a/k/a Marco Houmas, ELIAS I. YURICK, BARBARA ROSS a/k/a Barbara Houmas, CANDICE McCAMBRIDGE a/k/a Michelle Rogan, and PAUL SCOLIERI.

No. 75-004 Criminal
 (18 U.S.C. Sections 371 and 1341)

The grand jury charges:

1. That beginning on or about July 1, 1972, and continuing thereafter until on or about May 8, 1973, in the Western District of Pennsylvania, LOUIS C. BOSCIA, LOUIS A. DeSANTIS, RENALDO DiGIOSIO, MARK HOUMIS a/k/a Mark Houmas a/k/a Marco Houmas, BARBARA ROSS a/k/a Barbara Houmas, ELIAS I. YURICK, CANDICE McCAMBRIDGE a/k/a Michelle Rogan, and PAUL SCOLIERI, defendants herein, and Mary Jane Hanula, a co-conspirator but not a defendant

Appendix E—Indictments Involved.

herein, did wilfully and knowingly conspire, combine, confederate and agree together and with one another and others to the grand jury unknown to commit offenses against the United States, to-wit: violations of Title 18, United States Code, Section 1341; that is, in furtherance of a scheme to defraud and by means of false pretenses and false representations to obtain money from the Ohio Casualty Insurance Company, to use and cause to be used the United States mails, in violation of Title 18, United States Code, Section 1341.

2. It was a part of the conspiracy that the defendants, LOUIS C. BOSCIA, MARK HOUMIS and Mary Jane Hanula, a co-conspirator but not a defendant herein, agreed to stage an automobile collision involving a 1968 Mercury Monterey automobile, Serial No. 8Z44Y594740 bearing 1972 Pennsylvania registration no. 760-87Y, registered in the names of Louis and Grace Hanula, 1652 Westmont Avenue, Pittsburgh, Pennsylvania 15210, with the intent to fraudulently collect money provided for in an insurance policy purchased to cover the use and operation of said automobile and liability arising therefrom.

3. It was part of the conspiracy that on or about July 18, 1972, the defendant, Louis C. Boscia, counseled Mary Jane Hanula, a co-conspirator but not a defendant herein, and defendant Mark Houmis, to obtain an automobile insurance policy from Ohio Casualty Insurance Company covering the use and operation of the said 1968 Mercury Monterey.

4. It was a part of the conspiracy that defendants Louis A. DeSantis, Renaldo DiGiosio, Mark Houmis, Barbara Ross and Candice McCambridge would allege

that such policy to insure in name defendant
 Barbara Rogan begets bias

Appendix E—Indictments Involved.

they had received injuries while passengers in the said 1968 Mercury Monterey when it was allegedly involved in a collision and that they would cause claims arising from said alleged injuries to be presented to the Ohio Casualty Insurance Company.

5. It was part of the conspiracy that defendant Louis C. Boscia would make arrangements with Herbert M. Lurie, Attorney at Law, to represent all alleged passengers in the said 1968 Mercury Monterey at the time of the alleged collision for the purpose of presenting claims allegedly arising from said collision to the Ohio Casualty Insurance Company.

6. It was part of the conspiracy that defendant Louis C. Boscia would procure and prepare supporting documents in connection with claims arising from alleged personal injuries to and loss of employment by all passengers allegedly in the said 1968 Mercury Monterey at the time of the said staged accident and present said documents to Herbert M. Lurie, Attorney at Law for the purpose of supporting claims presented to the Ohio Casualty Insurance Company.

7. It was a part of the conspiracy that Louis C. Boscia would and did procure false statements concerning injuries allegedly suffered by defendants Mark Hounis, Louis DeSantis, Renaldo DiGiosio, Barbara Ross and Candice McCambridge in the said staged accident, medical treatment related thereto and loss of employment by defendants Mark Hounis, Barbara Ross and Candice McCambridge allegedly resulting from said staged accident; all for the purpose of increasing and inflating the amount of money received from the Ohio Casualty Insurance Company in settlement of claims arising from said staged accident.

Appendix E—Indictments Involved.

8. It was a part of the conspiracy that in furtherance of the objectives thereof mail matter would be placed and caused to be placed in Post Offices and authorized depositories for mail and would be delivered and caused to be delivered by the United States Postal Service.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants and conspirators performed the following overt acts:

1. In early July, 1972, prior to July 18, 1972, defendants Louis C. Boscia, Mark Hounis and Mary Jane Hanula, a co-conspirator but not a defendant herein, met and conferred together in Allegheny County, Pennsylvania, about the staging of an automobile accident.

2. On or about July 18, 1972, Mary Jane Hanula caused Ohio Casualty Insurance Company to issue to her parents, Louis and Grace Hanula, an automobile insurance policy, bearing policy number FA 753 7368 covering use, operation and liability arising therefrom of a 1968 Mercury Monterey, Serial No. 8Z44Y594740, Pennsylvania Registration No. 760-87Y, registered in the names of Louis and Grace Hanula.

3. On or about September 17, 1972, according to pre-determined scheme to defraud, defendants Louis C. Boscia, Louis A. DeSantis, Renaldo DiGiosio, Barbara Ross, Candice McCambridge, Mark Hounis and Mary Jane Hanula, a co-conspirator but not a defendant herein, proceeded in the said 1968 Mercury Monterey and another automobile to a point on U.S. Route 30, Finley Township,

Appendix E—Indictments Involved.

Allegheny County, where defendant Mark Houmis, while alone in the automobile, intentionally rammed the said 1968 Mercury Monterey into a utility pole.

4. On or about September 17, 1972, defendants Louis A. DeSantis, Renaldo DiGiosio, Mark Houmis, Barbara Ross and Candice McCambridge, procured their admission to West Allegheny Hospital, Oakdale, Pennsylvania, where they secured treatment from defendant Elias I. Yurick, O.D., for injuries alleged to have been incurred in the "accident".

5. On or about September 18, 1972, defendant Louis C. Boscia, caused Herbert M. Lurie, Attorney at Law, to be retained as counsel for defendants Louis A. DeSantis, Renaldo DiGiosio, Mark Houmis, Barbara Ross and Candice McCambridge, in furtherance of the scheme to defraud the Ohio Casualty Insurance Company.

6. On or about January 8, 1973, defendant Paul Scolieri, caused false information concerning employment of Candice McCambridge to be forwarded to Herbert M. Lurie, Attorney at Law, through defendant Louis C. Boscia.

7. Between September 18, 1972 and May 8, 1973, defendant Elias I. Yurick caused undated, false statements for medical treatments allegedly provided to defendants Louis A. DeSantis, Renaldo DiGiosio, Mark Houmis, Barbara Ross and Candice McCambridge to be forwarded to Herbert M. Lurie, Attorney at Law, through defendant Louis C. Boscia.

In violation of Title 18, United States Code, Section 371.

Appendix E—Indictments Involved.

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT COURT
OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs.

LOUIS C. BOSCIA, CASEY BABUSCIO, THOMAS WARREN HENNING a/k/a Thomas Warren, ROY F. NORRIS, JR., THOMAS ROBERT GALLO a/k/a Thomas Roberts, DAVID TOMPKINS, JOHN V. SABATINI, JOSEPH L. BISCEGLIA, M.D., MICHAEL F. DeROSA, D.D.S., and LEONARD E. SWEENEY, ESQUIRE

No. 75-003 Criminal
(18 U.S.C. Section 371 and 1341)

The grand jury charges:

1. That beginning on or about March 1, 1973, and continuing thereafter to on or about February 5, 1974, in the Western District of Pennsylvania, LOUIS C. BOSCIA, CASEY BABUSCIO, THOMAS WARREN HENNING a/k/a Thomas Warren, ROY F. NORRIS, JR., THOMAS ROBERT GALLO a/k/a Thomas Roberts, DAVID TOMPKINS, JOHN V. SABATINI, JOSEPH L. BISCEGLIA, M.D., MICHAEL F. DeROSA, D.D.S., and

Appendix E—Indictments Involved.

LEONARD E. SWEENEY, Attorney at Law, defendants herein, did knowingly and unlawfully conspire, combine, confederate and agree together and with each other, and with others to the grand jury unknown, to commit offenses against the United States, to wit: violations of Title 18, United States Code, Section 1341; that is, in furtherance of a scheme and artifice to defraud and by means of false pretenses and false representations to obtain money from the Ohio Casualty Insurance Company and the St. Paul Mercury Insurance Company, one of the St. Paul Companies, to use and cause to be used the United States mails in violation of Section 1341 of Title 18, United States Code.

2. It was part of the conspiracy that automobiles covered by insurance policies issued by the Ohio Casualty Insurance Company and the St. Paul Mercury Insurance Company would be involved in staged accidents.

3. It was a part of the conspiracy that claims arising from injuries allegedly suffered by passengers in the said automobiles would be submitted to the said insurance companies under the terms of said policies.

4. It was a part of the conspiracy that false statements of medical treatment and expenses would be procured from physicians and dentists and would be submitted to said insurance companies to inflate the claims of passengers allegedly injured in said accidents.

5. It was a part of the conspiracy that false statements of employment would be procured and submitted to said insurance companies to inflate the claims of passengers allegedly injured in said accidents.

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6. It was a part of the conspiracy that Herbert M. Lurie, Attorney at Law, and defendant LEONARD E. SWEENEY, Attorney at Law, would be retained to represent passengers allegedly injured in said accidents for the purpose of making claims upon said insurance companies.

7. It was a part of the conspiracy that in furtherance of the objectives thereof mail matter would be placed and caused to be placed in Post Offices and authorized depositories for mail and would be delivered and caused to be delivered by the United States Postal Service.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants and conspirators performed the following overt acts:

1. On or about March 7, 1973, defendant DAVID A. TOMPKINS purchased Ohio Casualty Insurance Company automobile insurance policy no. FA 763 39 82 covering the use and operation, and liability arising therefrom, of a 1972 Ford Pinto, Serial No. 2T11X198540, registered in the name of DAVID A. TOMPKINS, 4310 Stanely Street, Pittsburgh, Pennsylvania, and bearing 1972 Pennsylvania registration PA 5F2-098.

2. On or about April 12, 1973, defendants DAVID A. TOMPKINS, LOUIS C. BOSCIA, CASEY BABUSCIO, ROY F. NORRIS, THOMAS ROBERT GALLO a/k/a Thomas Roberts and THOMAS WARREN HENNING a/k/a Thomas Warren in the vicinity of East Willock Road and Wanley, Pittsburgh, Pennsylvania, caused the said 1972 Pinto Ford operated by defendant Tompkins to

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collide with the rear of a 1968 Ford sedan bearing 1972 Pennsylvania temporary registration No. 190-4110.

3. On or about May 4, 1973, defendants LOUIS C. BOSCIA and CASEY BABUSCIO caused Herbert M. Lurie, Attorney at Law, to forward a letter to the Ohio Casualty Insurance Company informing said insurance company that Lurie represented BOSCIA and BABUSCIO in connection with claims arising from an accident occurring on April 12, 1973, involving Ohio Casualty Insurance Company's insured, defendant DAVID A. TOMPKINS.

4. On or about May 8, 1973, defendants ROY F. NORRIS, JR. and THOMAS WARREN HENNING a/k/a Thomas Warren caused defendant LEONARD E. SWEENEY, Attorney at Law, to forward a letter to the Ohio Casualty Insurance Company informing the said insurance company that SWEENEY represented NORRIS and HENNING in their claims for injuries and damages sustained as a result of an accident on April 22, 1973, involving Ohio Casualty Insurance Company's insured, defendant DAVID A. TOMPKINS.

5. On or about July 30, 1973, defendant THOMAS ROBERT GALLO a/k/a Thomas Roberts purchased St. Paul Mercury Insurance Company automobile insurance policy No. 2H16821 covering use and operation, and liability arising therefrom, of a 1973 Ford Sedan, Serial No. 3W665185355, bearing 1973 Pennsylvania registration No. 257-140, registered in the name of Thomas Roberts, the same being an alias of defendant THOMAS ROBERT GALLO.

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6. On or about August 15, 1973, defendants THOMAS ROBERT GALLO a/k/a Thomas Roberts, JOHN V. SABATINI, ROY F. NORRIS, JR., and THOMAS WARREN HENNING caused a 1973 Ford sedan, Serial No. 3W665185355, bearing 1973 Pennsylvania registration no. 257-140, registered in the name of Thomas Roberts, 15 DeWalt Street, Pittsburgh, Pennsylvania, the same being the alias of defendant THOMAS ROBERT GALLO, to collide with a bridge abutment situated in the vicinity of 1200 River Road, Pittsburgh, Pennsylvania.

7. On or about September 13, 1973, defendants LOUIS C. BOSCIA and LEONARD E. SWEENEY, Attorney at Law, caused a letter from defendant SWEENEY to be forwarded to St. Paul Insurance Company 875 Greentree Road, Pittsburgh, Pennsylvania, advising said insurance company that defendant SWEENEY represented a John T. Boscia, who, it was alleged, sustained injuries and damages as a result of an accident on August 15, 1973, involving St. Paul Mercury Insurance Company's insured, Thomas Roberts, the same being the alias of defendant THOMAS ROBERT GALLO.

8. On or about September 19, 1973, defendants JOSEPH L. BISCEGLIA, M.D. and LOUIS C. BOSCIA caused to be delivered to defendant LEONARD E. SWEENEY, Attorney at Law, a bill containing a false statement for professional services alleged to have been rendered to a John T. Boscia, but which had not in fact been performed between August 15, 1973 and September 19, 1973, in connection with injuries alleged to have been received in the said automobile accident of August 15, 1973.

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9. On or about June 15, 1973, defendants MICHAEL F. DeROSA, D.D.S. and LOUIS C. BOSCIA caused to be delivered to Herbert M. Lurie, Attorney at Law, a medical report and bill containing false statements of treatment and professional services for dental work alleged to have been performed, but which had not in fact been performed, upon defendant CASEY BABUSCIO between April 12, 1973, and June 15, 1973, in connection with injuries alleged to have been received in the said automobile accident of April 12, 1973.

10. On or about June 1, 1973, defendants THOMAS ROBERT GALLO, LOUIS C. BOSCIA and THOMAS WARREN HENNING a/k/a Thomas Warren caused to be delivered to Herbert M. Lurie, Attorney at Law, a statement of employment of defendant GALLO containing false information as to the employment record of GALLO and weekly earnings paid to GALLO by Warren Premium prior to April 12, 1973.

11. On or about December 27, 1973, defendants JOHN V. SABATINI and LEONARD E. SWEENEY, Attorney at Law, caused a letter to be delivered to Ohio Casualty Insurance Company, Law & Finance Building, Pittsburgh, Pennsylvania, informing the said insurance company that defendant SWEENEY represented defendant SABATINI and other who were allegedly injured in an automobile accident which allegedly occurred on December 26, 1973, at the intersection of Meade Street and N. Trenton Avenue, Pittsburgh, Pennsylvania, involving an automobile owned by Ohio Casualty Insurance Company's insured, John B. Sabatini.

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12. On or about January 4, 1974, defendant LOUIS C. BOSCIA caused Herbert M. Lurie, Attorney at Law, to forward a letter addressed to Ohio Casualty Insurance Company, Law & Finance Building, Pittsburgh, Pennsylvania 15219, informing said insurance company that the law firm of Stokes, Lurie and Tracy represented Richard DiAchille and certain other claimants in connection with damages and injuries allegedly arising out of an automobile accident which allegedly occurred on December 26, 1973, at the intersection of Meade Street and N. Trenton Avenue, Pittsburgh, Pennsylvania, involving Ohio Casualty Insurance Company's insured John B. Sabatini of 1693 Seaton Avenue, Pittsburgh, Pennsylvania 15219.

13. On or about February 5, 1974, Ernest J. Leavy, Claims Supervisor, Ohio Casualty Insurance Company, on the basis of information provided to him by Herbert M. Lurie, Attorney at Law and defendant LEONARD E. SWEENEY, Attorney at Law, concerning potential personal injury claims against said insurance company arising from the said accident of December 26, 1973, established a reserve for the payment of said claims amounting to \$125,000.

In violation of Title 18, United States Code, Section 371.

No. 75-1676

AUG 20 1976

MICHAEL BOODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

LOUIS C. BOSCIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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OCTOBER TERM, 1976

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*ON PETITION FOR A WRIT OF CERTIORARI TO
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MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

Petitioner was charged in two separate indictments returned the same day in the United States District Court for the Western District of Pennsylvania. The first (Pet. App. E 25-31, the 75-3 indictment) charged that petitioner and others¹ had conspired to use the mails to defraud the Ohio Casualty Insurance Company and the St. Paul Mercury Insurance Company through the staging of three fake automobile accidents on April 12, August 15, and December 26, 1973. The second (Pet. App. E 20-24, the 75-4 indictment) charged petitioner and another group

¹The other co-conspirators named were Casey Babuscia, Thomas Warren Henning, Roy F. Norris, Jr., Thomas Robert Gallo, David Tompkins, John V. Sabatini, Joseph L. Bisceglia, M.D., Michael F. DeRosa, D.D.S., and Leonard E. Sweeney.

of conspirators² with conspiring to use the mails to defraud the former company through the staging of a fake automobile accident on September 17, 1972. Petitioner was tried first and convicted on the 75-4 indictment.³ The government then sought to bring to trial the 75-3 indictment.

Petitioner moved to dismiss the prosecution, alleging that the conspiracy charged in the 75-3 indictment was part of the conspiracy charged in the first trial (the 75-4 indictment) and that the second prosecution would violate the Double Jeopardy Clause.⁴ The district court in a thorough opinion denied the motion (Pet. App. A 6-14). On an interlocutory appeal, the court of appeals affirmed without opinion (Pet. App. B 15-17).

1. For the reasons stated in our response to the petition for a writ of certiorari in *Abney v. United States*, No. 75-6521, certiorari granted, June 14, 1976, and our memoranda in *Barket v. United States*, No. 75-1280, the court of appeals incorrectly assumed jurisdiction over the interlocutory appeal. But, for the reasons given in our supple-

mental memorandum in *Basket*,⁵ there is no reason to hold this case pending decision in *Abney*. For however this Court decides the jurisdictional question in *Abney*, the trial of this case should proceed, since the court of appeals properly rejected petitioner's double jeopardy claim on the merits.

2. The district court correctly concluded that "[w]hile the two indictments here in question allege commission of the same type of crime, i.e., conspiracy and violation of the Mail Fraud Statute, the offenses charged are not factually the same" (Pet. App. A 11). As the opinion of the district court details, the 75-4 indictment charged, and the evidence at petitioner's trial showed, that petitioner and a group of co-conspirators arranged a fake automobile accident and claim for Mary Jane Hanula on September 17, 1972. In the 75-3 indictment, petitioner with "an almost totally 'new cast'" (Pet. App. A 9), was charged with arranging three other accidents at different times. The two indictments thus charged separate conspiracies.

Contrary to petitioner's contention (Pet. 3-4), *Braverman v. United States*, 317 U.S. 49, does not bar his prosecution under the 75-3 indictment. In *Braverman*, the defendants were indicted for and convicted of seven conspiracies to violate different provisions of the internal revenue laws. At trial, however, the government conceded that there was only a single conspiracy to commit the seven different illegal acts (317 U.S. at 51). This Court reversed the multiple convictions and remanded for resentencing on the grounds that "[w]hether the object of a single agreement is to commit one or many crimes, it is in

²These co-conspirators were Louis A. DeSantis, Renaldo DiGiosio, Mark Houmis, Barbara Ross, Elias I. Yurick, Candice McCambridge, and Paul Scolieri. Mary Jane Hanula was named as an unindicted co-conspirator.

³At this trial, DeSantis, DiGiosio, Yurick and McCambridge were also found guilty of conspiracy and three substantive mailing counts. The charges against Scolieri were dismissed at the conclusion of the prosecution's case and Houmis and Ross were convicted in a later trial.

⁴Petitioner's case was severed from that of his co-conspirators. In a separate trial, Henning was convicted of conspiracy and two substantive mail fraud counts and Sweeney was convicted on three substantive counts. Babuscio, Norris, Gallo, Sabatini, Bisceglia, and DeRosa pleaded guilty and Tompkins is a fugitive.

⁵We are supplying a copy of that memorandum to petitioner.

either case that agreement which constitutes the conspiracy which the statute punishes" (*id.* at 53) and that "[t]he single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute * * *" (*id.* at 54).

In the present case, in contrast, the two indictments charged different conspiracies, involving separate groups at different times, both relating to defrauding insurance companies through a similar method. The differences between the conspiracy for which petitioner was convicted in indictment 75-4 and that with which he is charged in indictment 75-3 are sufficiently separate to justify petitioner's trial under the latter indictment despite his previous conviction under the former. See, *United States v. Hodes*, 502 F. 2d 586 (C.A. 5); *United States v. Prince*, 515 F. 2d 564 (C.A. 5).⁶

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1976.

⁶The lower court cases petitioner cites (Pet. 4) are inapposite. In *United States v. Tanner*, 471 F. 2d 128, 141 (C.A. 7), the government admitted that a conspiracy charged in a prior indictment had constituted a "sub-agreement" of the broader conspiracy charged in that case. In *United States v. O'Dell*, 462 F. 2d 224, 226, n. 2 (C.A. 6), a double jeopardy claim was rejected because, as here, the defendant's co-conspirators had been different. *United States v. Cohen*, 197 F. 2d 26, 29 (C.A. 3), involved a second conspiracy charge with the same overt acts as a first charge. Finally, in *United States v. Mallah*, 503 F. 2d 971, 986-987 (C.A. 2), the court sustained a double jeopardy claim because there was a significant overlapping of parties.